IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LETTERS PATENT APPEAL NO. 256 OF 2005
IN
WRIT PETITION NO. 1201 OF 1990

MUSHIR AHMED ANSARI .. APPELLANT

Versus

THE STATE OF MAHARASHTRA & ORS. RESPONDENTS

Mr. A.M. Maniyar for appellant
Mr. H.D. Buch with Mr. S.K. More for R-3 to 5

CORAM:-SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED:- 9/1/06

P.C.

. Heard learned counsel for the appellant.

2. The appellant has challenged order dated 25th August, 2005 passed by the learned Single Judge in Writ Petition No. 1201 of 1990. In the writ petition there is a challenge to the order passed by the School Tribunal on 11/9/1989.

3. The grievance of the appellant is about his supersession with effect from 16/7/87. In our opinion, the learned Single Judge has rightly

referred to amendment to Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act" for short), which was effected from 7th August, 1987. She has stated that supersession of an employee could, therefore, be challenged before the School Tribunal only after 7th August, 1987. Since the supersession of the appellant is with effect from 16th July, 1987 the appeal of the appellant did not lie before the Tribunal before the amendment. There can be no dispute about this proposition. This view taken by the learned Single Judge therefore, cannot be faulted.

4. The learned counsel, however, urged that he has challenged the constitutional validity of Section 3(2) of the MEPS Act and, therefore, the petition ought to have been entertained. We are informed by the learned counsel appearing for the respondents that the constitutional validity of the said section is upheld in **Gunvantlal Kantilal Khamar v. State of Maharashtra & Ors., 1993 1 CLR 295**. In view of this there was no question of admitting the petition on account of the said challeng.

5. The learned Single Judge has kept other

remedies open to the appellant. Mr. Maniyar, however, contended that the petitioner had approached the Deputy Director of Techinical Education by preferring an application. The appellant's application was rejected on 3rd February, 1986. If that was so then the appellant ought to have challenged the order dated 3rd February, 1986 which he has not done. In the circumstances, in our opinion, the present Letters Patent Appeal cannot be entertained.

6. Mr. Maniyar further relied on a Division Bench Judgment of this court in **Sulabha Govind Vidwans v. Shravan M. Shevale & Ors., 1995(1) Mh.L.J. 157** and contended that since Writ Petition No. 1201 of 1990 was pending in this court for about 15 years, the petitioner cannot be now told to adopt alternative remedy. In our opinion, facts of this case are not comparable to the facts of the present case. In the present case nothing prevented the petitioner from challenging independently the order dated 3rd February, 1986, passed by the Deputy Director of Technical Education. After having adopted the alternative remedy he ought to have pursued it. In the circumstances, the appeal is rejected.

(SMT. RANJANA DESAI,J.)

(D. B. BHOSALE, J.)